

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9924 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AJ VARGHESE

Versus

STATE OF GUJARAT

Appearance:

MR MD RANA for Petitioner

Mr. V.B.Gharaniya, Asstt.GP for the State.

MR YS LAKHANI for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/07/97

ORAL JUDGEMENT

Under resolution dated 22nd July, 1970, petitioner was appointed as Overseer under the respondent-Municipality [hereinafter referred to as "the Municipality"] in the pay scale of Rs.200-430. The petitioner took over charge on 4th August, 1970. Prior to his appointment as Overseer, the petitioner was serving as Supervisor on daily wages since 4th February, 1970. In view of the revision of pay of the Government servants which became effective from 1st January, 1986, servants of the Municipality also became entitled to the revision of pay with effect from 1st January, 1986. The petitioner's appointment as Overseer was approved by the Government under its order dated 30th December, 1994. In view of the said approval, revised pay in the scale of Rs.1400-2300 was sanctioned to the petitioner and from 1st January, 1995, he was paid the salary in the said revised scale. The petitioner, thereafter, applied for voluntary retirement and retired voluntarily in the month of August, 1996. Since then, the petitioner has been continuously claiming his right to receive difference of salary with effect from 1st January, 1986 to 31st December, 1994. However, same has not been responded to favourably. The petitioner also claims that he was entitled to Leave Travel Concession for Block Period 1992-95 which has not been paid to him. Feeling aggrieved, the petitioner has preferred this petition.

2. Learned advocate Mr. Lakhani has appeared for the Municipality. The Chief Officer of the Municipality has made counter affidavit. The Municipality does not dispute its liability to pay the arrears of salary and amount of leave travel concession to the petitioner. However, the only defence pleaded by the Municipality is that of financial constraints. It is submitted that many of the retired servants of the Municipality are not yet paid their dues and many of them have yet to be paid the arrears of salary on account of revision of pay which became effective from 1st January, 1973. In view of the same, the Municipality has expressed its inability to pay the dues of the petitioner.

3. Learned advocate Mr. Rana appearing for the petitioner has relied upon the judgment of the Supreme Court in the matter of Chief Conservator of Forests and Another Versus Jagannath Manuti Kondhare and Others [1996 SCC (L. & S.) 500]. A similar plea of financial constraints advanced by the appellate authority has been

rejected by the Court. Mr. Rana has also submitted that the plea of financial constraints advanced by the Municipality is not sustainable. He has referred to the grant sanctioned by the Government under its order dated 21st August, 1996 and also the income received by way of octroi. Be that as it may, the Municipality cannot be permitted to advance the plea of financial constraints and to elude its financial liability towards its existing and former employees. The Municipality is bound to discharge its financial liability. Petition is, therefore, allowed. Respondent Municipality is directed to pay to the petitioner all the arrears of salary and the amount of leave travel concession within a period of four months from the date of receipt of Writ of this Court. In the event, the Municipality fails to pay the aforesaid amount to the petitioner within a period of four months as directed hereinabove, the Municipality shall pay interest on the aforesaid amount at the rate of 12 % per annum from the date of this order till the date of payment. Rule is made absolute accordingly. There shall be no order as to costs.

Vyas